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April 1, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Opposition to EB Motion to Strike Reply; EB Docket No. 07-197

Dear Madame Secretary:

Enclosed for filing on behalf of Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, is the original and 6 copies of the Opposition to Enforcement Bureau's Motion to Strike Reply, in the above-referenced matter.

Sincerely,

Catherine Park, Esq.

Catherine Park, Esq.

Enclosures: Original + 6 Copies

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission	)	EB Docket No. 07-197
	)	
	)	
Resellers of Telecommunications Services	)	

To: Presiding Officer/Judge, Richard L. Sippel (Chief ALJ)

OPPOSITION TO ENFORCEMENT BUREAU'S MOTION TO STRIKE REPLY

1. Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission, by and through undersigned counsel, hereby submit this Opposition to Enforcement Bureau's Motion to Strike Reply. The Bureau's Motion to Strike Reply miscasts the Reply as submitted pursuant to 47 C.F.R. § 1.323(c), governing Motions to Compel Answers to Interrogatories. The Enforcement Bureau is mistaken. In support whereof, the following is shown:

2. Defendants filed "Defendants' Second Set of Interrogatories" on February 19, 2008. The Bureau submitted its "Enforcement Bureau's Objections and Responses to Defendants' Second Set of Interrogatories" on March 4, 2008.

3. Defendants filed their "Motion to Compel Answers to Defendants' Second Set of Interrogatories, and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath," on March 10, 2008. That Motion was filed pursuant to 47 C.F.R. § 1.323(c), which only permits an opposition to a motion to compel interrogatories, and

no reply. Whereupon, the Bureau filed its "Enforcement Bureau's Opposition to Motion to Compel Answers to Defendants' Second Set of Interrogatories and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath," on March 17, 2008.

4. On March 18, 2008, Defendants filed their "Motion to Compel Enforcement Bureau to Submit Appropriate Oaths or Affirmations to its First and Second Interrogatory Responses and Objections." That pleading is filed under 47 C.F.R. § 1.291(a)(1), governing "interlocutory pleadings filed in matters or proceedings which are before the Commission." The pleading contains the phrase "Motion to Compel" in the title, but is not a motion to compel in connection with interrogatories, under § 1.323(c). Defendants' Motion, indeed, has nothing to do with compelling answers to interrogatories, but discusses the fact that, because the Bureau submitted two late-filed affirmations, neither of which is made under penalty of perjury, Defendants may be entitled to relief.

5. The substance of the Bureau's argument in its Motion to Strike Reply may be that Defendants' additional Motion pointing out why the Bureau's affirmations may be insufficient should be considered an impermissible additional pleading under § 1.323(c). However, the Bureau's Motion to Strike Reply does not discuss § 1.291(a)(1) at all, pursuant to which Defendants' Motion was actually filed.

6. When a pleading is filed under § 1.291(a)(1), an opposition is permitted under § 1.294(a) ("[a]ny party to a hearing may file an opposition to an interlocutory request filed in that proceeding"). The Bureau filed such an opposition on March 24, 2008, entitled "Enforcement Bureau's Opposition to Motion to Compel Enforcement Bureau to Submit Appropriate Oaths or Affirmations to its First and Second Interrogatory Responses and Objections."

7. Replies to such oppositions are not permitted "unless specifically requested or authorized by the person(s) who is to make the ruling," under § 1.294(d). Defendants filed their "Reply to Enforcement Bureau's Opposition to Defendants' Motion to Compel Appropriate Oaths or Affirmations to Enforcement Bureau's First and Second Interrogatory Responses and Objections," on March 27, 2008. Defendants filed their Reply believing that such Reply was permitted as a matter of course.

8. However, the Presiding Judge may authorize the Reply, under § 1.294(d). If the Presiding Judge authorizes the Reply, it is not procedurally improper. Defendants submit that the Reply discusses matters affecting their substantial rights, thus it should be authorized. The Reply discusses the Bureau's inability or unwillingness to file their interrogatory responses under oath or affirmation on time and under penalty of perjury. If such interrogatory responses are not made under oath or affirmation, or if such affirmations are filed late, or not made under penalty of perjury, the situation suggests that the responses submitted under such lax circumstances may not be reliable or accurate. To accuse Defendants of "bad faith" merely for pointing out that the Bureau's affirmations were lacking in various respects is an exceedingly inappropriate response to a legitimate observation and request for relief made by Defendants.

9. Defendants are beginning to wonder if the Bureau's second failure to attach an affirmation was really a conscious decision by Bureau counsel, as claimed in the Bureau's filing of March 17, 2008 ("Counsel did not feel it appropriate to have someone else sign her name to an affirmation," p. 2, footnote 2, Enforcement Bureau's Opposition ...), or did the Bureau counsel merely forget to attach the affirmation again? Defendants prefer not to ask these questions, but the Bureau's pleadings are so impassioned[1] that Defendants must ask. Defendants

[1] *See, e.g.,* Enforcement Bureau's Opposition to Motion to Compel Answers to Defendants' Second Set of Interrogatories and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory

have a strong interest in ensuring that the prosecution behave in a principled manner.

10. No doubt, the Bureau is likely to accuse Defendants of bad faith again, merely for raising the possibility that Bureau counsel may have forgotten to attach the affirmation twice—which would be the simplest explanation. Are Defendants not permitted even to point out the obvious, without being accused of attempting to divert the Court's attention from the allegations in the Order to Show Cause? The Bureau accused Defendants of attempting to divert the Court's attention from the allegations in the Order to Show Cause when Defendants pointed out the truth[2]—the Bureau filed both affirmations late, then claimed that it did not.[3]

11. For the record, Defendants did not seek relief from the Bureau's failure to file appropriate affirmations for the purpose of diverting attention from the allegations in the Order to Show Cause. That argument makes no sense. There is no way that Defendants could divert attention from those allegations, since those allegations are the reason why Defendants have been called before this tribunal. To suggest such a rationale for Defendants' request for relief from the Bureau's actions makes evident just how warped the Bureau's perception has become. How would it be possible for Defendants to divert attention from the very allegations for which Defendants are currently before this tribunal? Such a characterization of Defendants' motives for seeking relief from the Bureau's actions reveals that the Bureau must view Defendants with extreme disfavor, and are likely to cast Defendants' actions in the least favorable light. If the Bureau is of the opinion that it is entitled to view Defendants' actions with that heightened level

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Responses Under Oath, filed March 17, 2008 (accusing Defendants of "bad faith" for pointing out the truth—both of the Bureau's affirmations were late-filed); Enforcement Bureau's Opposition to Motion to Compel Enforcement Bureau to Submit Appropriate Oaths or Affirmations to its First and Second Interrogatory Responses and Objections, filed March 24, 2008 (calling Defendants' Motion to Compel Appropriate Affirmations, etc., filed on March 18, 2008, a "lengthy diatribe"—although the Motion is only 6 pages long).

[2] *See* Enforcement Bureau's Opposition to Motion to Compel Answers to Defendants' Second Set of Interrogatories and Motion for Remedy for Enforcement Bureau's Second Failure to Submit Interrogatory Responses Under Oath, filed March 17, 2008, pp. 1-2.

[3] *Id.*, at 1-2.

of disfavor, the Bureau is mistaken. Such disfavor that defies even evidence of truth—the Bureau late-filed both affirmations, neither is made under penalty of perjury, and the Bureau attempted to deny same—deprives Defendants of the presumption of innocence, and creates a substantial risk to Defendants' right to a fair hearing.

12. Defendants pointed out the Bureau's failings with regard to the affirmations because Defendants are entitled to point out the truth, and Defendants are entitled to request relief for actions affecting their substantial rights.

13. Wherefore, Defendants hereby request that the Presiding Judge authorize the Reply, which Defendants filed pursuant to § 1.294(d).

Respectfully Submitted,

Catherine Park

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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent for filing this 1st day of April, 2008, by U.S. Mail, Express Mail, to the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

And served by U.S. Mail, First Class, on the following:

Richard L. Sippel, Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C861
Washington, D.C. 20554

Kris Monteith, Chief
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